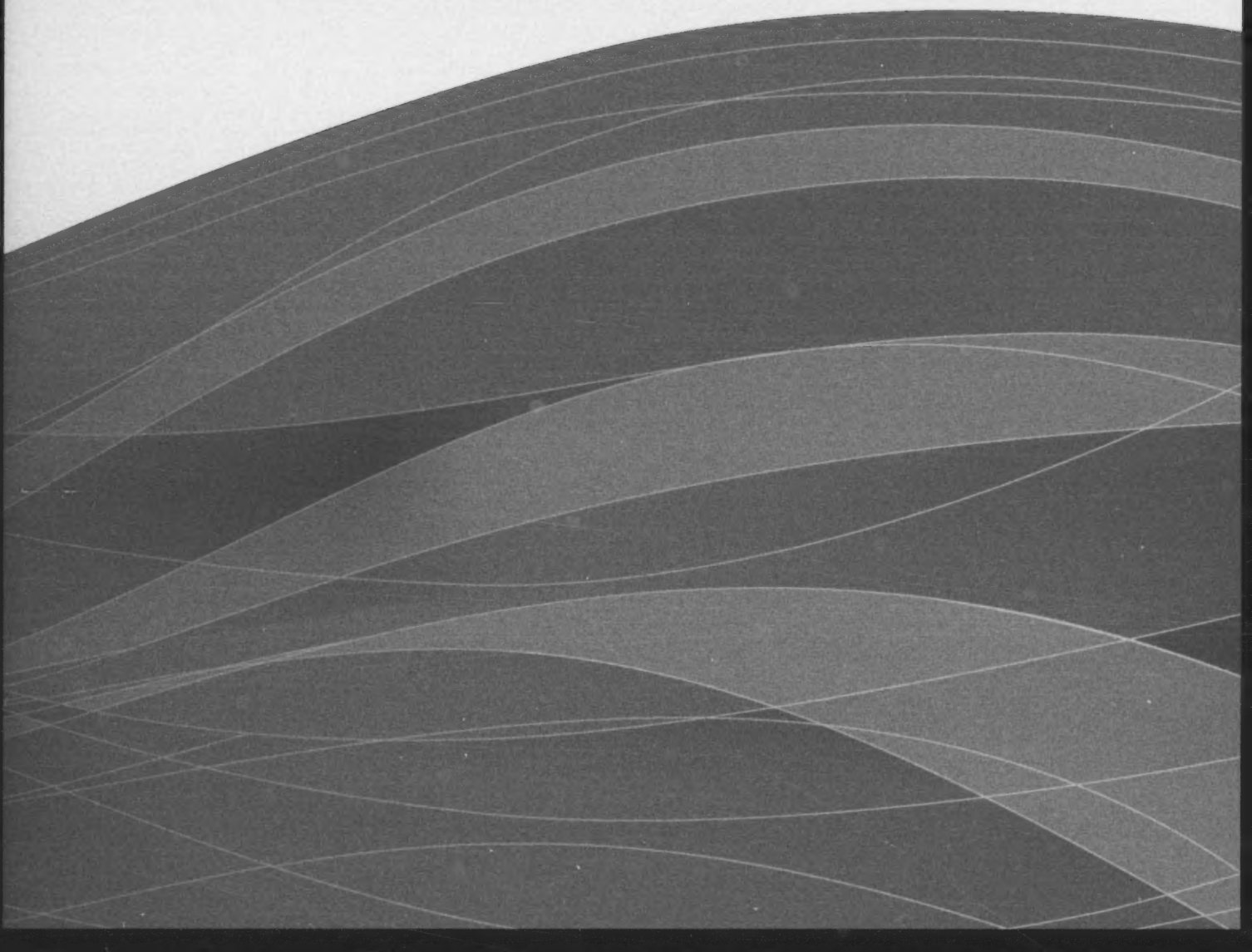
Merit Commissioner

Annual Report 2015/16

UPHOLDING FAIR HIRING IN THE BC PUBLIC SERVICE



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Office of the
Merit Commissioner

The Honourable Linda Reid
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings, Room 207
Victoria, British Columbia V8V 1X4

Dear Madam Speaker:

It is my honour to present the 2015/16 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Fiona Spencer

Fiona Spencer
Merit Commissioner

Victoria, British Columbia
May 2016

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Merit Commissioner

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Fiona Spencer
Merit Commissioner

Message from the Merit Commissioner

I am pleased to present this 2015/16 Annual Report. As my current term comes to an end, I remain confident in the value of the work of the Office and look forward to continuing in this important role as I begin a new term.

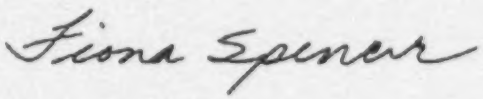
This past year, we have maintained focus on our core lines of business: completing employee-requested reviews of staffing decisions and undertaking audits of randomly selected appointments to and from within the BC Public Service. I strongly believe that, if acknowledged and adopted, the findings and recommendations resulting from our audit of hiring processes can produce positive change and improve the ability of the organization to succeed.

Our annual audits are conducted to determine if hiring processes are reasonable, fair and consistent, and result in appointments based on the principle of merit. In addition to providing deputy ministers and heads of organizations with an individual audit report for each appointment audited within their organization, we also report the collective audit results to them, to the Legislative Assembly, and to the BC Public Service Agency.

Our audits are designed to provide positive assurance where appropriate. However, given that hiring processes change from year to year, competition to competition, and even hiring manager to hiring manager, we often find some aspects of the hiring process that could be improved. The hiring process is not static – change is essential if the process is to adapt to a myriad of evolving circumstances in the work environment. Audits can assess newly introduced practices or provide a safeguard by detecting problems early and preventing those problems from being incorporated into subsequent hiring processes. As it may be difficult to anticipate the implications of new approaches until they are put into practice, audits provide a valuable means of identifying weaknesses or problem areas. Audits also identify areas where improvements to systems or processes are needed to help ensure that the principle of merit-based hiring is respected.

Taken as a whole, our audits allow us to draw conclusions about the extent to which appointments during the period audited were the result of a merit-based recruitment and selection process. They provide an independent third-party perspective on the state of merit-based hiring in the BC Public Service.

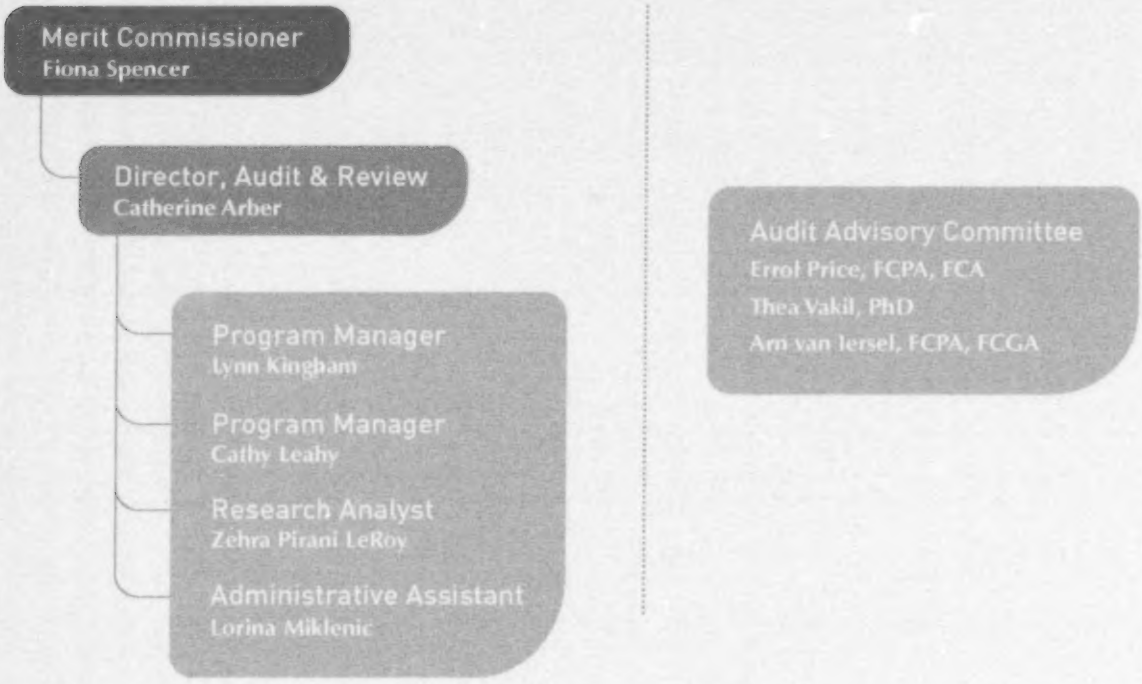
Details of our audit results, which are summarized in this Annual Report, can be found on our website, along with information related to staffing reviews. I continue to be encouraged that the work of the Office of the Merit Commissioner is used by individuals and organizations for learning and to enhance their merit-based hiring practices.



Fiona Spencer, Merit Commissioner

The Office of the Merit Commissioner

The Merit Commissioner is appointed by the Legislative Assembly on a part-time basis for a three-year term. The Office of the Merit Commissioner (the Office) consists of a small team of core staff supplemented by contract auditors.



Our Audit Advisory Committee provides a forum for discussion, consultation, advice and guidance with respect to our audit program and process. Members are selected for their professional qualifications, relevant knowledge about the public service and expertise related to performance audits. The Committee meets periodically with the Merit Commissioner and her staff to provide audit advice, contribute to audit planning and examine issues of interest.

The Office is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others and we make certain all those who contact the Office are treated with respect. We are passionate about our work and understand that a vital part of being independent is to have the courage to deliver facts and recommendations about where improvements are needed, as well as to report on progress and accomplishments.

The Merit Principle

The *Public Service Act* states that all appointments to and from within the BC Public Service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan.

Vision

A professional and non-partisan public service that is hired and promoted on the principle of merit.

Mission

To serve the people of British Columbia through their elected representatives of the Legislative Assembly, by monitoring public service appointments to ensure the application of the merit principle in hiring and promotions in the BC Public Service.

Role

The Merit Commissioner provides independent oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Office achieves this oversight by randomly auditing staffing appointments, conducting special audits and studies, and reviewing appointment decisions upon request by employee applicants. The Office also informs hiring managers, employees and the public of our findings through reports and studies. As well, we deliver presentations to increase awareness about the value of merit-based hiring practices. The Merit Commissioner reports annually to the Legislative Assembly on the application of the merit principle in the BC Public Service.

Stakeholders

The Office provides oversight of provincial government organizations that have employees appointed under the *Public Service Act* (the *Act*), including: ministries, tribunals, agencies, boards, commissions, independent offices of the Legislature, and the offices of the Courts. The Office broadly shares responsibility for upholding merit-based hiring and promotions in the BC Public Service with key stakeholders as illustrated in Table 1.

Table 1 - Stakeholder Responsibilities for Merit-Based Hiring

Deputy Minister, BC Public Service Agency	Sets staffing policy and the accountability framework for human resource management with the Deputy Ministers' Council Provides staffing support and training to client groups Delegates responsibilities for staffing activities to deputy ministers and heads of organizations Authorizes direct appointments Receives and takes action as appropriate on the Merit Commissioner's audit and study findings
Deputy Ministers and Organization Heads	As a Council, carry out the corporate human resource plan Create and lead a culture supportive of merit-based hiring Sub-delegate staffing activities to line managers and supervisors Hold hiring managers accountable for hiring decisions Respond to requests at the second step in the staffing review process Receive and take action as appropriate on the Merit Commissioner's audit and staffing review decisions
Hiring Managers	Acquire and maintain the knowledge and skills required to conduct merit-based hiring processes Make fair and unbiased hiring decisions Respond to requests at the first step in the staffing review process by providing feedback

Fair hiring practices are of significant interest to employees and are key to their engagement and retention. Employees can have a positive impact on hiring practices when they raise issues and concerns, as that helps us gauge the state of merit-based hiring within the BC Public Service, and may contribute to informing the Office's work related to future audits and special studies.

The bargaining units that represent most BC Public Service employees (BC Government and Service Employees' Union [BCGEU], the Professional Employees Association [PEA], and the nurses' unions), as well as the BC Excluded Employees' Association, have long records of encouraging and supporting merit-based hiring in the public service.

Our Work

The Office has two main lines of business: conducting merit performance audits and, upon request, reviewing individual staffing decisions. The following sections include synopses of work completed during 2015/16 and work in progress. Detailed reports related to the work we completed in 2015/16 and past years can be found at **www.meritcomm.bc.ca.**

Merit Performance Audits

Overview

The Office monitors the application of the principle of merit in the BC Public Service by conducting random audits of permanent appointments and temporary appointments greater than seven months. Any organization to which section 8 of the *Act* applies may be audited by the Office.

Appointments on Merit

Section 8(1) of the *Act* states that, other than in some defined exceptions, appointments to and from within the public service must: (a) be based on the principle of merit, and (b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.

We conduct audits in accordance with generally accepted professional audit standards and methodology, work with independent statisticians to ensure rigour and objectivity in obtaining random and representative samples, and incorporate quality assurance reviews into the audit process.

In accordance with section 5.1(a) of the *Act*, the purpose of a merit performance audit is to determine:

(a) whether the recruitment and selection processes were properly applied to result in appointments based on merit, and

(b) whether the individuals when appointed possessed the required qualifications for the positions to which they were appointed.

Recruitment and Selection Process

In accordance with an established audit program, we determine whether the design and conduct of a hiring process led to a merit-based appointment. As part of this determination, we consider the application of relevant legislation, policy, and provisions of collective agreements, such as whether the factors of merit were appropriately assessed, and whether the hiring decisions were properly communicated to employee applicants. The overall approach (i.e., process) employed to recruit and select applicants is examined, as well as specific aspects of the process, which we categorize as assessment (e.g., short-listing, testing, and interviewing), past work performance, years of continuous service and notification. In addition, consideration is given to whether there was sufficient supporting documentation (i.e., evidence) of the actions taken and decisions made. The detailed audit program can be viewed at **www.meritcomm.bc.ca.**

For each recruitment and selection process audited, one of the findings described in Table 2 is made.

Individual Appointed

We also determine, in accordance with the established audit program and based on the evidence provided, whether the individual appointed possessed the education and experience specified as required for the position and met the minimum criteria established for the other factors assessed during the process. With respect to the individual whose appointment is being audited, this determination leads to one of the findings described in Table 3.

Factors of Merit

Section 8(2) of the *Act* sets out the matters to be considered in determining merit, which must include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service.

Table 2 - Recruitment and Selection Process Findings	
Merit	The appointment was the result of a process designed to assess the factors of merit based on the duties to be performed. The process was applied in an objective and transparent manner, and assessment decisions were fair and reasonable.
Merit with exception	Overall, the appointment was the result of a merit-based process; however, one or more issues were found with the design or application of the process, none of which had an identifiable negative impact on the outcome.
Merit not applied	The appointment was not the result of a merit-based process. A critical flaw or error was found in the design or application of the process, which resulted in an identifiable negative impact on the outcome.
Did not demonstrate	There was insufficient evidence provided to demonstrate that the design or application of the process was based on merit.

Table 3 - Individual Appointment Findings	
Qualified	The individual, when appointed, possessed the qualifications specified as required for the position.
Not qualified	The individual, when appointed, did not possess the qualifications specified as required for the position.
Did not demonstrate	There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.

Audit findings for each appointment are reported to the respective deputy minister or organization head. A report of overall results is provided to the Deputy Minister of the BC Public Service Agency (Agency Head) and presented to the Legislative Assembly before being posted on our website. The audit findings and report acknowledge and support good hiring practices throughout the BC Public Service and also hold managers accountable for hiring decisions. The merit performance audit is a means of bringing issues and opportunities for improvement to the attention of the Agency Head, deputy ministers and organization heads.

Audit Determinations

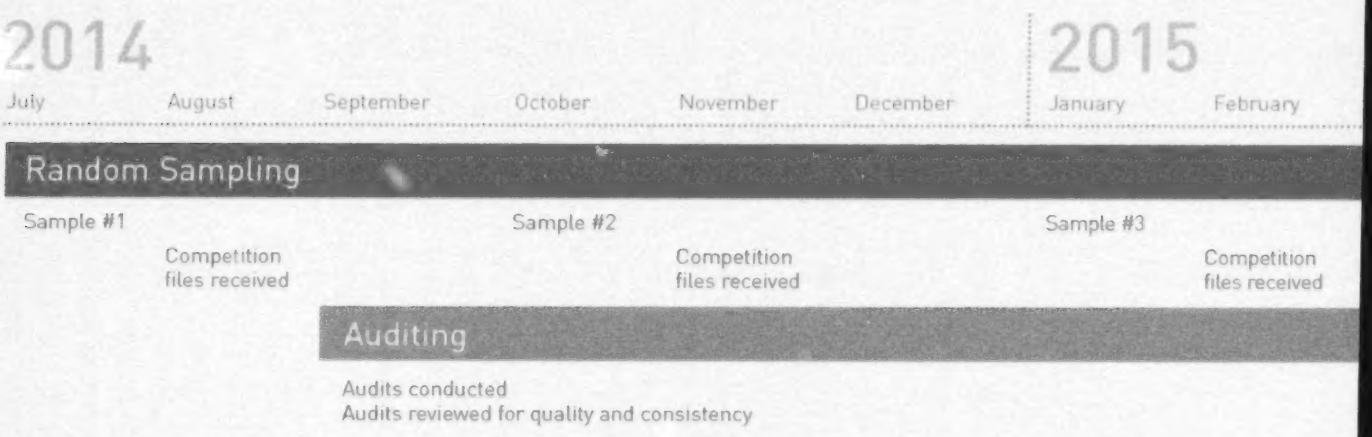
Each audit results in two determinations: whether the recruitment and selection process was based on merit and whether the individual appointed was qualified.

Work Completed

2014/15 Merit Performance Audit

The Office moved from a calendar year to a fiscal year audit cycle during 2013/14, and in 2014/15 we conducted our first full fiscal year audit. A graphic representation of the timeline for the 2014/15 Merit Performance Audit is shown in Chart 1.

Chart 1 – 2014/15 Merit Performance Audit Timeline

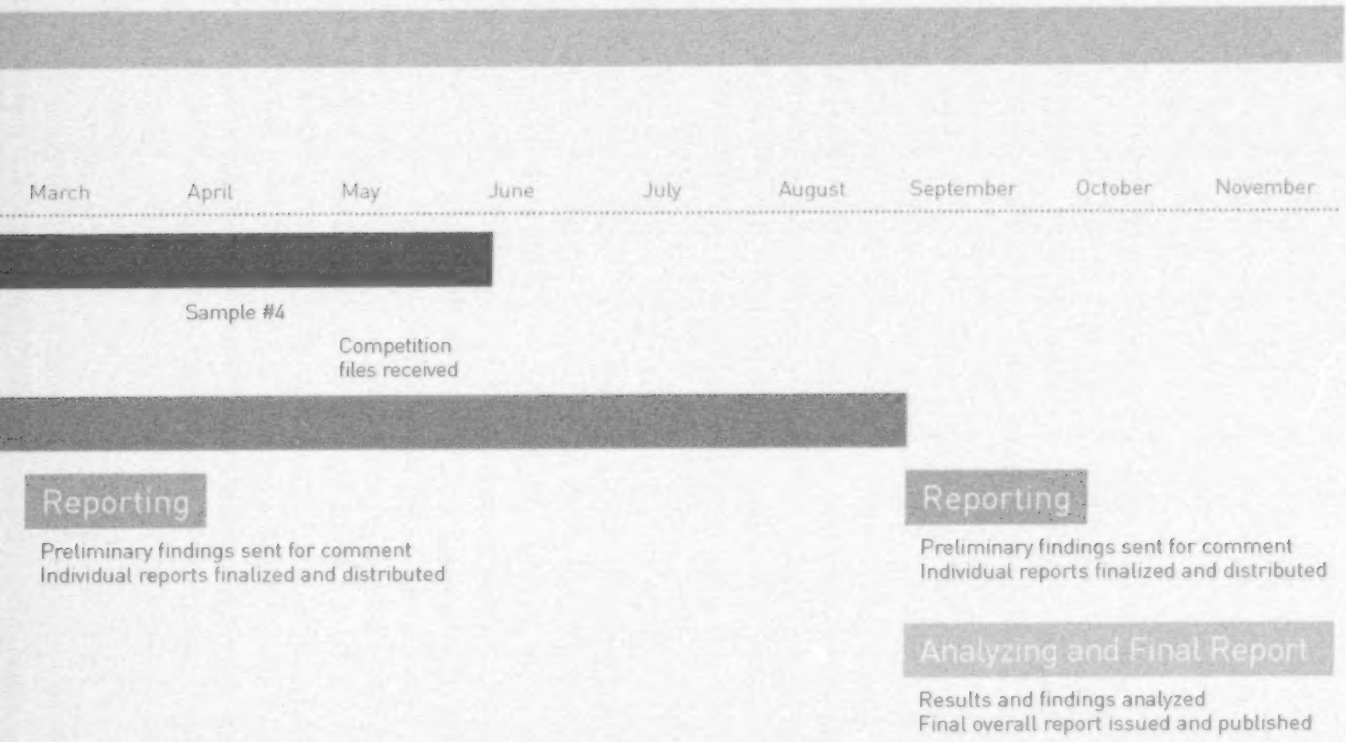


The appointments audited in the 2014/15 Merit Performance Audit were randomly selected by BC Stats from a population of 4,045 appointments made between April 1, 2014 and March 31, 2015. To ensure these appointments were representative of the overall appointment population, the data was stratified by organization size (up to 1,000 employees or more than 1,000 employees) and appointment type (permanent, temporary exceeding seven months, or direct appointment). An overall sampling rate of six per cent ensured that audit results would be generalizable to the same types of appointments across the BC Public Service. A total of 252 appointments were selected, of which nine were determined to be outside the scope of the audit and removed from consideration. The Office conducted audits of the remaining 243 hiring processes.

Where preliminary findings of "merit not applied" were made, we provided the responsible deputy minister or organization head with the draft results and the opportunity to provide additional or clarifying information. They also received a final report for each appointment audited within their organization. At the conclusion of the audit, we completed a comprehensive analysis of the overall findings. Our findings and analysis were reported to the Legislative Assembly in November 2015, were published on our website, and are summarized as follows.

Individual Appointed

The 2014/15 Merit Performance Audit found that all individuals whose appointments were selected for audit possessed the education and experience specified as required for the position to which they were appointed and met the minimum criteria established for the other factors which were assessed during the selection process.



Recruitment and Selection Process

The audit found that 60 per cent of appointments were the result of a merit-based recruitment and selection process with no issues or flaws. An additional 32 per cent of appointments were found to be in the "merit with exception" category: this determination indicates one or more issues with the recruitment and selection process, ranging from minor to serious, that did not have an identifiable negative impact on the outcome. The "merit not applied" findings show that flaws in the process affected the outcome in eight per cent of the audited appointments. Based on the extrapolations provided by BC Stats, this means that an estimated 1,280 appointments made throughout the BC Public Service in 2014/15 had issues which were considered to be exceptions to merit-based hiring and 2,306 did not. As well, a total of 329 appointments made throughout the BC Public Service in 2014/15 were estimated to have been the result of a flawed process (i.e., they were not merit-based).

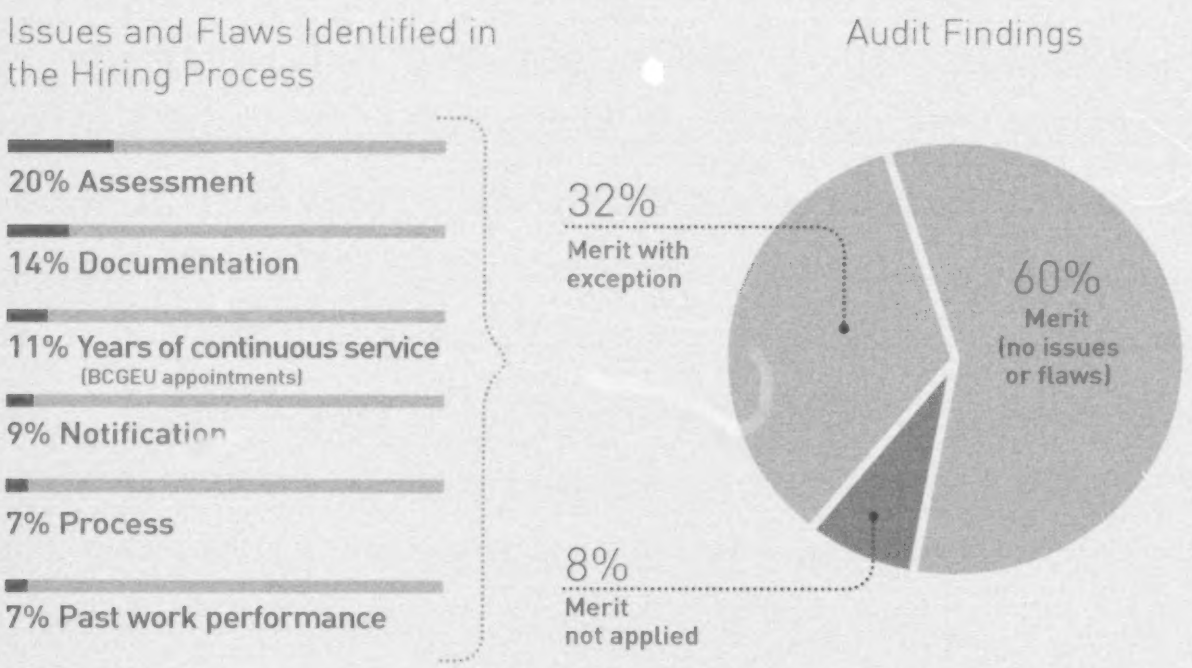
The issues and flaws identified with the design and application of the recruitment and selection process were grouped into the following categories: process, assessment, past work performance, years of continuous service, notification and documentation. These categories are described in Table 4.

Table 4 - Categories of Issues and Flaws

Category	Audit Considerations
Process	Was the overall approach to recruit and select applicants fair, reasonable and transparent, given the job and its requirements?
Assessment	Were applicants consistently and appropriately evaluated in accordance with the following factors of merit: education, skills, knowledge and experience?
Past work performance	Was this factor properly assessed, including at least one reference from a supervisor or equivalent?
Years of continuous service	Was this factor properly considered, and assessed where applicable?
Notification	Were employee applicants notified of the final outcome of the hiring process?
Documentation	Was there sufficient documentation to show that process, actions and decisions were transparent, consistent, relevant and reasonable?

The frequency of the identified issues and flaws that led to "merit with exception" or "merit not applied" findings are indicated in Chart 2. While many appointments had more than one issue or flaw identified, there was only one overall finding reported for each audit.

Chart 2 - 2014/15 Merit Performance Audit Findings



The 2014/15 audit found an overall improvement from 2013/14 in the percentage of hiring processes free of issues or flaws. Similar to 2013/14, the highest number of problematic findings related to the areas of assessment or documentation. It was also noted that errors in calculating years of continuous service markedly increased in 2014/15. This may have resulted from the introduction of a new formula for this calculation and will be monitored going forward.

2014/15 Merit Performance Audit Recommendations

Based on the analysis of the 2014/15 Merit Performance Audit findings, the Merit Commissioner made a number of recommendations to deputy ministers and organization heads to strengthen merit-based hiring. These recommendations, which follow, highlight areas for improvement related to process, assessment, and notification. It is recognized that the BC Public Service Agency's action and assistance may be necessary to support their implementation.

- Ensure appointments are made using a competitive process which, at a minimum, allows for the possibility of a reasonable applicant pool and evaluation of applicants, rather than using an approach which has only one possible outcome.
- When using the results of a previous competitive process, confirm that the position to be filled is similar enough to the initial vacancy to legitimately use the results; and give consideration to the continued validity of the results when circumstances, such as time elapsed since the initial competition, are taken into account.
- Ensure the qualifications advertised as minimum requirements are accurate and are not reduced at the short-listing stage.
- Establish meaningful and sufficient assessment standards for each element of the selection process.
- Ensure final notification of the competition outcome to employee applicants includes those eliminated during screening or early stages of the process.

Work Underway

2015/16 Merit Performance Audit

The 2015/16 Merit Performance Audit of appointments made from April 1, 2015, through March 31, 2016, is currently underway. Random samples of appointments were drawn each quarter, and in March 2016 audit reports for 166 appointments from the first two quarters were provided to deputy ministers and organization heads. In the fall of 2016 the audit reports for appointments identified in the last two quarters of the fiscal year are expected to be distributed. The final comprehensive report, including the analysis and summary of the overall audit results, is targeted for publication in November 2016.

Staffing Reviews

Overview

The *Act* provides employee applicants who are unsuccessful in competitions for permanent appointments or temporary appointments exceeding seven months with the right to request a review of the appointment decision. There is a three-step staffing review process which an employee may initiate when notified of a competition outcome.

Staffing Review Process

Step 1	Step 2	Step 3
Feedback	Internal Inquiry	Review
from the hiring manager	by the deputy minister or organization head	by the Merit Commissioner

The third step in the process, a review by the Merit Commissioner, is available to employees who are applicants for bargaining unit positions. Should the employee proceed to this step, the Merit Commissioner conducts an independent review and determines whether the aspects of the selection process related to the employee's grounds comply with the requirements of section 8(1) of the *Act*. If the appointment is determined to comply, the Merit Commissioner upholds the appointment decision; if not, she directs a reconsideration of the appointment decision. The Merit Commissioner's decisions are final and binding. In general, decisions are issued within 30 days following receipt of the documents necessary to conduct the review.

Work Completed

2014/15 Report on Staffing Reviews

An analysis of the 15 eligible staffing reviews conducted during 2014/15 was completed in the spring of 2015 and a final report was published on our website in June 2015. Given the relatively small number of reviews, broad conclusions were not drawn; however, the report discussed several common grounds put forward by the employees who requested this final level of examination of appointment decisions. These grounds, representative of employee concerns, included: the improper consideration or weight given to a factor of merit (typically experience); the unfair use of behavioural interviewing and/or the incorrect assessment of behavioural

competencies; the assessment of past work performance based on a sole and/or inappropriate referee or an assessment inconsistent with previous evaluations; and the incorrect calculation of years of continuous service.

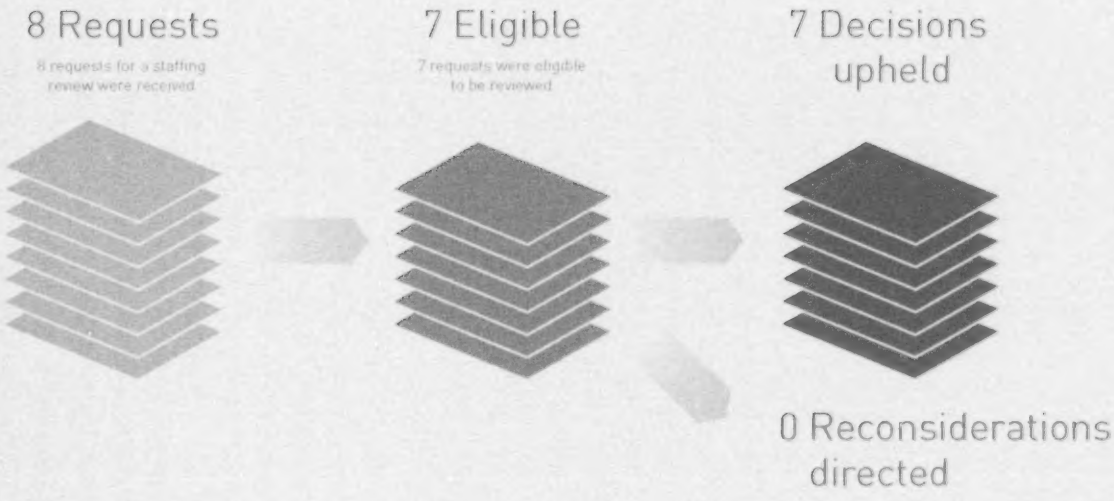
In 10 of the cases, the Merit Commissioner dismissed the review and upheld the original appointment decision. In the other five cases, she found that in relation to one or more aspects of the employee's grounds, the process was not in compliance with section 8(1) of the *Act* and she directed a reconsideration of the appointment decision. In 2014/15, although reconsiderations were directed in a record high 33 per cent of the reviews conducted, flaws found in the competitions were unique to the particular circumstances and were not considered indicative of any major shifts in merit-based hiring practices.

The Merit Commissioner did identify a significant area of concern with respect to the provision of feedback to unsuccessful employee applicants, which is the first step in the staffing review process. As in previous years, there were several instances where unsuccessful applicants were not provided with a sufficient explanation as to why they were not successful. Complete, clear and timely feedback is essential to ensuring unsuccessful employee applicants understand how they were assessed in a selection process and have the best information available should they choose to exercise their right to a staffing review.

2015/16 Staffing Reviews

In 2015/16, the Merit Commissioner received eight requests for review of appointments within five different ministries or organizations. The majority of these requests requests involved in-service competitions for permanent appointments. One request was deemed ineligible, as no internal inquiry had been conducted. Reviews of the remaining seven appointments were undertaken.

The conduct of each review included a detailed analysis of the documented evidence contained within the competition file, supplemented by information obtained through discussions with the employee requesting the review, the hiring manager and, where necessary, with other relevant individuals such as hiring panel members. Each review was guided by the requirements of legislation, collective agreement provisions, and hiring policies. Consideration was given as to whether the hiring process was fair and transparent, the assessment conducted was relevant to the job, and the decisions made were reasonable.


8 Requests
8 requests for a staffing review were received
7 Eligible
7 requests were eligible to be reviewed
7 Decisions upheld
0 Reconsiderations directed

The Merit Commissioner issued seven decisions in 2015/16. Each decision was rendered after thoughtful consideration of the employee's concerns and a thorough examination of the hiring process. In each case, the appointment was found to be merit-based.

The reviews were concluded, on average, within 29 days and the detailed reports shared with the employee and responsible deputy minister or organization head.

2015/16 Grounds for Review

Common grounds for review in the fiscal year included:

- insufficient recognition or credit given to extensive related experience;
- too many or too few applicants short-listed;
- irrelevant criteria used to short-list applicants;
- insufficient points awarded to test or interview responses; and
- inconsistencies with previous assessment processes for similar positions.

Work Underway

2015/16 Report on Staffing Reviews

An analysis of the staffing reviews conducted in 2015/16 is being undertaken and a final report will be published in the summer of 2016. Recurring themes in employees' grounds provide the Office with insight into areas where future audits or studies of specific aspects of the hiring process may be warranted.

Special Studies

Study of Self-Assessment Questionnaires

In conducting audits and reviews of BC Public Service appointments, the frequent use of self-assessment questionnaires as a short-listing tool was observed. As short-listing is generally the first step in a selection process, and the inappropriate or incorrect use of self-assessment questionnaires could potentially have a significant impact on merit-based hiring processes, we concluded that an examination of this practice was warranted.

We conducted a special study of this recruitment and selection tool and found that self-assessment questionnaires are effective where they are well-designed, applied thoughtfully and used in the appropriate circumstances. Further, it was apparent that the BC Public Service Agency had identified the limitations of using self-assessment questionnaires and had taken steps to mitigate these shortcomings. We are aware of the ongoing improvements being made in this regard and will continue to observe on the use of this tool as part of our regular random audit of appointments. A summary report of the study's findings was posted on our website in the fall of 2015.

Merit-based hiring is an important part of:

- **building a qualified and professional public service;**
- **sustaining an engaged and productive workforce;**
- **demonstrating credible leadership; and**
- **maintaining public trust.**

Budget

The Office's operating budget and expenditures for the 2015/16 fiscal year are shown by expenditure type in Table 5.

In November 2015, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to review results of the work of the Office over the previous year, establish priorities for the year ahead and review budget requirements for the next three fiscal years. The Committee acknowledged the work of the Office and endorsed the Service Plan as it was presented. Subsequently, the Office was allocated a budget of $1,054,000 for fiscal 2016/17. Details of this budget allocation are also shown in Table 5.

Table 5 – Budget and Expenditures

	Approved Budget 2015/16	Actual Expenditures 2015/16	Approved Budget 2016/17
Salaries & Benefits	$611,000	$579,950	$637,000
Travel Expenses	$15,000	$17,000	$15,000
Office Expenses	$328,000	$302,370	$302,000
Professional Services	$100,000	$148,178	$100,000
Total	$1,054,000	$1,047,498	$1,054,000

Note: As of April 1, 2015, shared services costs previously reported as salaries & benefits are reported as office expenses.

Appendix A

Organizations Subject to Oversight by the Merit Commissioner

(as of March 31, 2016)

Ministries

Aboriginal Relations and Reconciliation
Advanced Education
Agriculture
Children and Family Development
Community, Sport and Cultural Development
Education
Energy and Mines
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
International Trade
Jobs, Tourism and Skills Training
Justice
Natural Gas Development
Public Safety and Solicitor General
Small Business and Red Tape Reduction
Social Development and Social Innovation
Technology, Innovation and Citizens' Services
Transportation and Infrastructure

Independent Offices

Auditor General
Elections BC
Information and Privacy Commissioner
Merit Commissioner
Ombudsperson
Police Complaint Commissioner
Representative for Children and Youth

Courts of British Columbia

Provincial Court of BC
Supreme Court of BC
BC Court of Appeal

Other Public Sector Organizations

Agricultural Land Commission
Auditor General for Local Government
BC Human Rights Tribunal
BC Pension Corporation
BC Public Service Agency
BC Review Board
Community Care and Assisted Living Appeal Board
Destination BC
Employment and Assistance Appeal Tribunal
Environmental Appeal Board
Financial Institutions Commission
Financial Services Tribunal
Forest Appeals Commission
Forest Practices Board
Health Professions Review Board
Hospital Appeal Board
Independent Investigations Office
Islands Trust
Office of the Premier
Oil and Gas Appeal Tribunal
Property Assessment Appeal Board
Public Guardian and Trustee
Public Sector Employers' Council Secretariat
Royal BC Museum
Safety Standards Appeal Board
Surface Rights Board

Merit Commissioner

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